

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3622 of 1988

with

SP.CIVIL APPLICATION Nos 4588, 5677, 5906 & 6395 of 1988

AND

SPECIAL CIVIL APPLICATION No 98 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JYOTINDRA J SHAH & ORS.

Versus

NAVINITLAL D PARIKH

Appearance:

1. Special Civil Application No. 3622 of 1988
None present for Petitioner
None present for Respondents No. 2 & 29
MR VB GHARANIA for Respondent No. 30
None present for Respondent No. 31,32
MR KETAN DAVE for Respondents No.2, 16, 21, 22, 24, 26, 27, 28 & 29.
2. Special Civil Application No 4588 of 1988
MR BN RAVAL for Petitioner

None present for Respondents No.4 & 5
MR VB GHARANIA for Respondent No. 2
None present for Respondents No. 3, 6 & 7.

3. Special Civil Application No 5677 of 1988

MR BN RAVAL for Petitioners
None present for Respondents No.1, 7 & 10
MR VB GHARANIA for Respondent No. 2
MR RK MISHRA for Respondents No. 3 to 6, 8 & 9

4. Special Civil Application No 5906 of 1988

None present for Petitioners
None present for Respondent No.1
MR VB GHARANIA for Respondent No.2
None present for Respondents No.3 & 4.

5. Special Civil Application No 6395 of 1988

None present for Petitioners
None present for Respondent No.1
MR VB GHARANIA for Respondent No.2
None present for Respondents No. 3 to 22

6. Special Civil Application No 98 of 1989

None present for Petitioner
None present for Respondent No.1
None present for Respondent No.2
MR VB GHARANIA for Respondent No.3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/12/96

ORAL JUDGEMENT

1. As all these petitions proceed on same facts and grounds, and as such, the same are being disposed of by this common judgment.

2. To appreciate the controversy which has been raised by the petitioners in these Special Civil Applications, the facts are being taken from Special Civil Application No.4588 of 1988.

3. The petitioner no.2 is a Managing Trustee of Shri C.P. Bhagat Trust. This trust runs a primary school in the name of Democratic Primary School, and the petitioner no.1 is its Principal. The respondents no.3 to 7, the teachers of the said school filed an Application no.130 of 1987 before the Gujarat Primary Education Tribunal, Ahmedabad. The cognizance of this application was taken by the Tribunal on 19-10-1987 by passing an ex-parte interim orders restraining the petitioners from

terminating the services of respondents no.3 to 7 as also not to interfere in their performing duties and to make payment regularly of approved salary by cheques. The passing of this order gave rise a cause of action to the petitioners to file this Special Civil Application before this court.

4. This writ petition has come up for admission before this court on 18th August, 1988 and rule was issued and interim relief in terms of paragraph no.19(c) has been granted. That interim relief came to be modified on 25th August, 1988 and interim relief was granted in terms of para no.19(c) and para no.19(d). Para no.19(d) reads as under:

to stay, pending the hearing and final disposal of this petition, the implementation and operation of the order dated October 19, 1987, made by the Tribunal in Application no.130 of 1987;

So the ex-parte interim relief order made by the Tribunal was stayed by this court, which continues till this date.

5. Learned counsel for the petitioners contended that the Tribunal has no jurisdiction to make the order dated 19th October, 1987, as it had not come in existence on the said date.

6. On the other hand, the counsel for the respondents contended that nothing now survives in this Special Civil Application because subsequently gazette notification has been made for constitution of the Tribunal. The interim relief which has been granted by the Tribunal earlier to the publication of gazette notification of its constitution remain stayed for all these years. The interest of justice will be served in case this court directs the Tribunal to decide the matters on merits.

7. I have given my thoughtful consideration to the submissions made by learned counsel for the parties.

8. Section 40F of the Gujarat Primary Education Act, 1947 as amended by Gujarat Act No.24 of 1986 enacted a provision for constitution of Tribunal for the purpose of redressal of the grievances regarding the service conditions etc. of the employees of the aided institutions. This provision provides that there shall be constituted by the State Government by an order published in the official gazette one or more Tribunals for the purpose of this chapter. The amending Act came

into force on 22nd May, 1986. Under the notification dated 23rd January, 1987, the Tribunal has been constituted, but that notification has been published in the gazette only on 26th November, 1987. There was some error in that notification regarding chapter number which has been corrected by notification dated 27th January, 1987 published in the gazette of 31st December, 1987. So the Tribunal was not constituted on day on which the ex-parte interim orders were passed.

9. Subsection (1) of sec.40F of the Act, provides for the constitution of Tribunal by an order published in the official gazette which has admittedly been done on 26th November, 1987 in the present case.

10. The counsel for the respondent though contended that subsequently the order of constitution of the Tribunal has been published, whatever order which has been made by the Tribunal earlier thereto will stand cured or may not be quashed by this court only on this ground, but I do not consider it to go on this question in these matters as in the year 1987 itself that is after few months of the passing of the impugned order, the notification for constitution of the Tribunal has been published in the gazette.

11. There is yet another reason for which I do not consider it to go on the merits of this contention. The impugned order has been stayed by this court in these matters and the interim relief granted by the Tribunal remained stayed for all these years under the stay order of this court. So that order was not given effect to. The counsel for the parties have given out that some of the respondents in these Special Civil Applications have already filed fresh application before the Tribunal which are pending. This is another reason that now the contention raised by the petitioners in these petitions may not be decided on merits. However, the question which arises for consideration of this court is whether the Tribunal could have granted the interim relief of the nature to be granted at the final stage. The prayer which has been made by the respondents for grant of interim relief before the Tribunal was that the management may be restrained from terminating their services as also not to interfere in their performing duties and to make payment regularly of approved salary by cheques. The employer has all right to terminate the services of its employees in accordance with law. No injunction could have been granted merely on the apprehension of the employees that their services are likely to be terminated by their employer and there

cannot be any presumption that the respondents shall be dismissed from the services without following the procedure as laid down in law. The presumption is that law has to be complied with and followed. In the case where order of termination is impugned, the court may not grant interim relief as it may amount to granting of the final relief and secondly in such case it cannot be said that any irreparable injury will be caused which cannot be compensated in terms of money. If that is the position then the grant of interim relief to restrain the employer from terminating the services of its employees and from making any interference in performing of their duties and further to make the payment regularly is certainly an order which is inconceivable. In fact, it is a stage where the respondents have no cause of action to approach to the Tribunal. The cause of action could have accrued to them only when the action is concluded and some order adversely affecting their service conditions has been made. To grant an injunction merely *prima-facie* case is there in favour of the respondents may not be sufficient for granting an injunction thereof. In addition to *prima-facie* case, the respondents have to establish that nongranting of interim relief will result in causing of irreparable injury which cannot be compensated in terms of money and secondly, the balance of convenience also lies in their favour to grant interim relief in the form of temporary injunction. The relief of the nature which has been prayed for in this case was of mandatory form. The mandatory form injunction has been prayed for at the stage when the services of the respondents were not terminated. The petitioners could not have been restrained to exercise their power of terminating of the services of their employees in accordance with law, more so when even on termination of services there may not be any justification to allow the employees to continue in service and reason is very obvious that non granting of interim relief in such case will not amount to causing any irreparable injury which cannot be compensated in terms of money. The Hon'ble Supreme Court has given a note of caution from time to time in the matter of grant of temporary injunction and interim relief by this court. In the case of State of U.P vs. Vishveshvar reported in 1995 (Supp) (3) SCC 590, the Hon'ble Supreme Court held that the grant of final relief in the form of interim relief is impermissible. What exactly here the respondents prayed for giving them relief of the nature which could have been granted at the final stage, more so in the case where no order prejudicially to their service conditions has been made. Reference may have to another decision of the Hon'ble Supreme Court in the case of Bank of Maharashtra vs.

Race Shipping & Transport Co. Ltd. reported in AIR 1995 SC 1368 where the court has deprecated the practice of granting by the courts interim order giving in substance the principal relief in the petition. In the case of Bharat Bhushan Sonaji vs. Abdul K. Mohammed reported in 1995 (Supp) (2) SCC 593, the Hon'ble Supreme Court observed that interim order passed pending writ petition having an effect of allowing the writ petition itself is not proper. In the case of Shiv Shanker vs. Board of Directors reported in 1995 (Supp) (2) SCC 762, the Hon'ble Supreme Court has observed that the grant of relief asked for in the writ petition by way of interim order is not proper.

12. In the case of Commissioner/Secretary to Government, Health & Medical Education Department vs. Ashok Kumar Kohli reported in 1995 (Supp) (4) SCC 214, the Hon'ble Supreme Court has observed that interim order should not amount to overreaching main relief which ultimately may or may not be passed in the writ petition. That was the case where the respondent Dr. Ashok Kumar Kohli had taken a stand that the select list prepared by the Public Service Commission in which his name was there had not lapsed while the Government stand was that the list stood lapsed with the expiry of one year. The High Court seems to have given the direction in the case by interim direction of giving appointment to the Doctor. That gave cause to challenge that order by filing an appeal to the Hon'ble Supreme Court. In those facts, the court has observed as stated earlier. Exactly same is the case here. The matter is yet to be decided finally and interim relief which has been granted would amount to overreaching the main relief which ultimately may or may not be granted by the Tribunal in favour of the petitioners. Since the appeals are pending in the Tribunal, I am not expressing any opinion on merits and even I have not touched the merits of the matter. In this judgment, I have only confined to legality, proprietary of the order of the Tribunal granting interim relief in favour of the respondents.

13. Reference may have to another decision of the Hon'ble Supreme Court in the case of Burn Standard Co. Ltd. vs. Dinbandhu Majamudar reported in AIR 1995 SC 1499. It was the case of correction of the date of birth sought by the employee in which the interim relief has been granted, that is pending adjudication on the date of birth of the concerned employee, he was allowed to continue in the service. The grant of interim relief of the aforesaid nature was deprecated by the Hon'ble Supreme Court in the aforesaid case. If relief of the

nature as prayed for in these matters is granted what ultimately remains in the final appeal to be decided. In case ultimately the Tribunal decides the matter against the respondents then by virtue of this interim relief, the petitioners have to and in fact were compelled to continue those persons in the employment otherwise they may not be the persons to be retained in the employment.

14. Taking into consideration the totality of the facts of this case, the grant of interim relief of the nature which has been made in the present case cannot be allowed to operate. On the last hearing, the counsel for the some of the private respondents appeared and they have made a prayer that though the appeal may be ordered to be heard on merits, but the interim relief granted by this court be vacated and the interim relief granted by the Tribunal should be ordered to be in operation, but they have failed to make out any case for confirmation of the order of the Tribunal impugned in this Special Civil Application on merits. The order of the interim relief granted by the Tribunal has remained under stay for all these years and this is another reason that at this stage it should not be allowed to operate leaving apart what otherwise also the same is not sustainable on merits.

15. In the result, all these Special Civil Applications are disposed of with the direction to the Tribunal to decide the applications filed by the respondents expeditiously, but not later than six months from the date of receipt of certified copy of this order. The interim orders which have been passed by the Tribunal in the applications of the respondents shall remain stayed till the decision of the applications. However, it is made clear that in case some of the respondents have filed fresh applications then the applications of those persons may be clubbed together and be decided accordingly. Rule in all these Special Civil Applications stand ordered with the above observations and directions. No order as to costs.

zgs/-